

Via Email, Fax, U.S. Mail and Hand Delivery

June 1, 2009

Bill Pope
Business Agent, Operating Engineers Local No. 3
1654 The Alameda, Suite 110
San Jose, CA 95126

RE: Last, Best, Final Offer

Dear Bill:

On May 14, 2009, we sent you a letter enclosing the City's Last, Best, Final Offer. In that letter, we acknowledged receipt of your letter dated May 12, 2009, that indicated a desire to meet as provided for in Section 23(b) of the City's Employer-Employee Relations resolution. We advised you of our intent to take the Last, Best, Final Offer for Council approval in early June and that, therefore, it was important to meet soon. We asked that you please let us know your earliest availability to meet.

On May 18, 2009, we followed up when we did not hear back from you about scheduling a meeting. You responded on May 18, 2009, stating that you would be in contact with us once you received direction from your members. On May 26, 2009, we still had not heard back from you, and we advised you of our intent to place the item on the June 9, 2009, City Council agenda. On May 27, 2009, we sent you a copy of the Council memo.

We received an email from you on May 28, 2009, indicating that at the OE#3 General Membership meeting held the previous night, the members in attendance overwhelmingly gave the Negotiating team direction to take the City's Last, Best, Final Offer to the rest of membership to vote. Your email indicated that you would like to accomplish the vote over the next week and requested our office's assistance in facilitating getting this accomplished. We are glad to be of assistance, and our office has been in contact with you. We understand that the voting will occur over several meetings beginning on Wednesday, June 3, 2009.

We hope the OE#3 membership will vote to accept the City's Last, Best, Final Offer. However, on May 29, 2009, we received a fax of an Unfair Practice Charge that OE#3 has filed with the Public Employment Relations Board. The City will be carefully reviewing the Charge and responding accordingly.

We noted that one item OE#3 is raising is the provision that states, "The Union hereby waives any potential right to meet and confer over retiree healthcare benefits for future hires." This provision has been in the City's proposals since the proposal presented to OE#3 on March 19, 2009. Our proposal regarding the negotiability of future employee's retiree medical benefits was a response to comments made by you at the bargaining table, and OE#3 gave no indication that they were not in agreement with that language.

The City has no plans to unilaterally implement language regarding the negotiability of retiree healthcare benefits for future hires. In addition, to avoid any misunderstandings, the City hereby withdraws section 27.6 of the Retiree Healthcare portion of our Last, Best, Final Offer. (Revised proposal enclosed.)¹ Please note that the only change to the Last, Best, Final Offer attached is the removal of this provision.

We look forward to hearing back from OE#3 regarding the results of the membership's ratification vote prior to the City Council's action on June 9, 2009, to implement our Last, Best, Final Offer.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Gurza", with a long horizontal flourish extending to the right.

Alex Gurza
Director of Employee Relations

Enclosure

c: Gina Donnelly, Deputy Director of Employee Relations

¹ When and if the City decides to pursue different retiree healthcare benefits for future hires, we will provide OE#3 with advance notice so that we can discuss any applicable bargaining obligations at that time.

**2009 OE#3 NEGOTIATIONS
CITY LAST, BEST, FINAL OFFER**

TERM

One year, effective the beginning of the first full pay period following ratification by the OE#3 Membership and approval by the City Council.

STEP INCREASES

All OE#3 represented employees will have step and merit increases frozen through the term of the agreement. This means that all wages will be frozen through the term of this agreement for employees represented by OE#3. Upon the expiration of this agreement, employees will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

HEALTH INSURANCE

See Attached

DISCIPLINARY ACTION

See Attached

RETIREE HEALTHCARE

See Attached

**2009 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
LAST, BEST, FINAL OFFER**

CITY PROPOSAL #7, 8 and 9- HEALTH INSURANCE

Proposed Language

5.5 Health Insurance.

- 5.5.1 ~~The City will pay 90% of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay 10% of the premium for the lowest priced plan up to a maximum of \$50.00 per month. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

~~Effective the beginning of pay period one (1) of payroll calendar year 2007, the City shall pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one-hundred (\$100) per month. If the employee's ten percent (10%) contribution for the lowest priced plan exceeds one-hundred dollars (\$100) per month the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee.~~

~~Effective the beginning of pay period one-fifteen (15) of payroll calendar year 2008~~2009, the City shall pay ninety (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage up to a maximum of one-hundred and fifty dollars (\$150) per month. ~~If the employee's ten percent (10%) contribution for the lowest priced plan exceeds one-hundred and fifty dollars (\$150) per month the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee~~the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

- 5.5.2 Effective July 1, 2009, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$10
- b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 for non-formulary drug co-pay.)
- c. Emergency Room Co-pay shall be increased to \$50

- 5.5.3 The Benefits Review Forum representatives may evaluate and recommend appropriate changes in the Health Insurance, Dental, and Orthodontic coverage, subject to approval by the City and ratification by the employee organization.

**2009 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
LAST, BEST, FINAL OFFER**

CITY PROPOSAL #30- DISCIPLINARY ACTION

Proposed Language

ARTICLE 28 DISCIPLINE

Disciplinary action is defined as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the term of the salary reduction will be specified in the notice of intended discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

The City has a policy of progressive discipline. Discipline is intended to be corrective whenever possible. Discipline will be initiated pursuant to the guidelines outlined in the City of San Jose Discipline Training Handbook. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense.

The City recognizes the process of timely, fair and consistent disciplinary actions is a key factor in maintaining positive employer-employee relations. It is in the interests of both parties to have allegations of misconduct investigated in a thorough and timely fashion.

The appeal process for any disciplinary action shall continue to be only those in effect at the time of the execution of this agreement.

When an employee is being interviewed and the employee reasonably believes that the investigation is likely to result in disciplinary action, the employee has the right to request to have a union representative present during the investigative interview.

No provisions of this Article 28 shall be subject to the grievance procedures of this agreement. Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not subject to appeal through the grievance procedure of this Agreement.

**2009 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
LAST, BEST, FINAL OFFER**

ARTICLE 27 RETIREE HEALTHCARE

(Current Article 27 and subsequent articles to be re-numbered)

- 27.1 The City and the Union agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 27.2 The City and the Union further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Union will support such amendments.
- 27.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided in five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Union agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.
- 27.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long as the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the

2009 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
LAST, BEST, FINAL OFFER

Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

- 27.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.